

## CHAPTER 12

# RELOCATION ASSISTANCE

- 57-12-1. Short title.
- 57-12-2. Declaration of policy.
- 57-12-3. Definitions.
- 57-12-4. Federal funds - Direct assistance.
- 57-12-5. Reimbursement of owner for expenses.
- 57-12-6. Buildings, structures or other improvements.
- 57-12-7. Replacement property.
- 57-12-8. Advisory program.
- 57-12-9. Rules of displacing agency.
- 57-12-10. Displacing agency may contract for services or function through another agency.
- 57-12-11. Payments not income or resources for welfare or tax purposes.
- 57-12-12. Judicial review.
- 57-12-13. Procedure for acquisition of property.
- 57-12-14. Dispute resolution - Additional appraisal.

### **57-12-1. Short title.**

This act shall be known and may be cited as the "Utah Relocation Assistance Act."

### **57-12-2. Declaration of policy.**

It is hereby declared to be the policy of this act and of the state of Utah, and the Legislature recognizes:

- (1) That it is often necessary for the various agencies of state and local government to acquire land by condemnation;
- (2) That persons, businesses, and farms are often uprooted and displaced by such action while being recompensed only for the value of land taken;
- (3) That such displacement often works economic hardship on those least able to suffer the added and uncompensated costs of moving, locating new homes, business sites, farms, and other costs of being relocated;
- (4) That such added expenses should reasonably be included as a part of the project cost and paid to those displaced;
- (5) That the Congress of the United States has established matching grants for relocation assistance, and has also established uniform policies for land acquisition under the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq. to assist the states in meeting these expenses and assuring that land is fairly acquired;
- (6) That it is in the public interest for the state of Utah to provide for such payments and to establish such land acquisition policies.

Therefore, the purpose of this act is to establish a uniform policy for the fair and equitable treatment of persons displaced by the acquisition of real property by state and local land acquisition programs, by building code enforcement activities, or by a program of voluntary rehabilitation of buildings or other improvements conducted pursuant to governmental supervision.

All of the provisions of the act shall be liberally construed to put into effect the foregoing policies and purposes.

### **57-12-3. Definitions.**

As used in this chapter:

- (1) "Agency" means:
  - (a) a department, division, agency, commission, board, council, committee, authority, political subdivision, or other instrumentality of the state or of a political subdivision of the state whether one or more: and
  - (b) any other person whose use of the power of eminent domain results in a person becoming a displaced person.
- (2) "Business" means any lawful activity, excepting a farm operation, conducted primarily:
  - (a) for the purchase, sale, lease, or rental of personal or real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

- (b) for the sale of services to the public;
- (c) by a nonprofit organization; or
- (d) for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.
- (3) "Displaced person" means any person who, after the effective date of this chapter, moves from real property, or who moves his personal property from real property, or moves or discontinues his business or moves his dwelling as a result of the acquisition of the real property, in whole or in part, or as a result of a written order of the acquiring agency to vacate real property for a program of purchase undertaken by an agency or as a direct result of code enforcement activities or a program of rehabilitation of buildings conducted pursuant to a federal or state assisted program.
- (4) "Family farm" means a farm operation which is conducted:
  - (a) on two sections (1280 acres) or less; or
  - (b) as a sole proprietorship or through an entity which is wholly owned by members of the same immediate family.
- (5) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.
- (6) "Non-profit organization" means all corporations, societies, and associations whose object is not pecuniary profit, but is to promote the general interest and welfare of the members, whether temporal, social, or spiritual.
- (7) "Person" means any individual, partnership, corporation, or association.
- (8) "Small business" means a business which has a gross annual income of less than \$1,500,000.

#### **57-12-4. Federal funds - Direct assistance.**

- (1) When federal funds are available for payment of direct financial assistance to persons displaced by acquisition of real property by any agency, the displacing agency is authorized to use such federal funds with state or local funds to the extent provided by federal law and may provide such direct financial assistance in the instances and on the conditions set forth by federal law and regulations.
- (2) When federal funds are not available or used for payment of direct financial assistance to persons displaced by the acquisition of real property by an agency, the displacing agency may provide direct financial assistance to such persons. Financial assistance authorized by this Subsection (2) shall not exceed the total amount that would have been payable under Subsection (1) of this section if federal funds had been available or used.

#### **57-12-5. Reimbursement of owner for expenses.**

Any agency acquiring real property for its use shall as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner for expenses the owner necessarily incurred for:

- (1) recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the agency;
- (2) penalty costs for prepayment for any preexisting recorded mortgage entered into in good faith encumbering the real property;
- (3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the agency, or the effective date of possession of such real property by the agency, whichever is the earlier; and
- (4) relocation costs.

#### **57-12-6. Buildings, structures or other improvements.**

- (1) Where any interest in real property is acquired, an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which is required to be removed from the real property or which is determined to be adversely affected by the use to which the real property will be put, shall be acquired.

(2) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired under Subsection (1), the building, structure, or other improvement shall be deemed to be a part of the real property to be acquired, notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove the building, structure, or improvement at the expiration of his term; and the fair market value which the building, structure, or improvement contributes to the fair market value of the property to be acquired, or the fair market value of the building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(3) Payment for the buildings, structures, or improvements as set forth in Subsection (2) shall not result in duplication of any payments otherwise authorized by state law. No payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any payment, the tenant shall assign, transfer, and release all his right, title and interest in and to the improvements. Nothing with regard to this acquisition of buildings, structures, or other improvements shall be construed to deprive the tenants of any rights to reject payment and to obtain payment for these property interests in accordance with other laws of this state.

#### **57-12-7. Replacement property.**

(1) No person shall be required to move or be relocated from land used for his residence and acquired under any of the condemnation or eminent domain laws of this state until he has been offered a comparable replacement dwelling, including the curtilage, which is a decent, safe, clean, and sanitary dwelling, including the curtilage, adequate to accommodate the occupants, available on the private market, and reasonably accessible to public services and places of employment.

(2) If a program or project cannot proceed to actual construction because comparable sale or rental housing is not available and cannot otherwise be made available, such action shall be taken as is necessary or appropriate to provide this housing by use of funds authorized for the project.

(3) No person shall be required to move from his dwelling, including the curtilage, after the effective date of this act because of any project of the agency, unless replacement housing is available to, and offered to the property owner.

(4) The agency shall assist owners of small businesses and family farms in identifying replacement properties available on the private market, located within the jurisdiction of the agency.

#### **57-12-8. Advisory program.**

(1) Whenever the acquisition of real property for a program or project undertaken by an agency will result in the displacement of any person after the effective date of this act, the agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services prescribed in this act. If the agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, it may offer this person relocation advisory services under such program.

(2) Each relocation assistance program required by Subsection (1) shall include such measures, facilities, or services as may be necessary or appropriate in order:

(a) to determine the needs of displaced persons, business concerns, and nonprofit organizations for relocation assistance;

(b) to assist owners of displaced businesses and farm operations in obtaining and becoming established in suitable business locations or replacement farms;

(c) to supply information concerning programs of the federal, state, and local governments offering assistance to displaced persons and business concerns;

(d) to assist in minimizing hardships to displaced persons in adjusting to relocation; and

(e) to secure, to the greatest extent practicable, the coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of the relocation program.

#### **57-12-9. Rules of displacing agency.**

(1) (a) A displacing agency may enact rules to assure that:

(i) the payments and assistance authorized by this chapter are administered in a manner that is fair, reasonable,

and as uniform as practicable;

(ii) a displaced person who makes proper application for a payment authorized by this chapter is paid promptly after a move or, in hardship cases, is paid in advance; and

(iii) any person aggrieved by a determination as to eligibility for a payment authorized by this chapter, or the amount of a payment, may have the person's application reviewed by the head of the displacing agency.

(b) Each displacing agency that has not adopted rules under Subsection (1)(a) shall comply with the rules promulgated by the Utah Department of Transportation relating to displaced persons in right-of-way acquisitions.

(2) Each displacing agency shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its adjudicative proceedings.

#### **57-12-10. Displacing agency may contract for services or function through another agency.**

To prevent unnecessary expense and duplication of functions and to promote uniform and effective administration of relocation assistance programs for displaced persons, the displacing agency may enter into contracts with any person for services in connection with these programs, or may carry out its functions under this act through any agency or any federal agency or instrumentality.

#### **57-12-11. Payments not income or resources for welfare or tax purposes.**

No payment received by a displaced person under this act shall be considered as income or resources for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any state law or for the purposes of the state's individual income tax, corporation franchise tax, or other tax laws. These payments shall not be considered as income or resources of any recipient of public assistance, and such payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled.

#### **57-12-12. Judicial review.**

(1) Any person aggrieved by an order concerning relocation assistance may obtain judicial review.

(2) Venue for judicial review of informal adjudicative proceedings is in the district court of the county in which the real property taken for public use is located.

#### **57-12-13. Procedure for acquisition of property.**

Any agency acquiring real property as to which it has the power to acquire under the eminent domain or condemnation laws of this state shall comply with the following policies:

(1) Every reasonable effort shall be made to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(3) Before the initiation of negotiations for real property, an amount shall be established which is reasonably believed to be just compensation therefor, and such amount shall be offered for the property. In no event shall such amount be less than the lowest approved appraisal of the fair market value of the property. Any decrease or increase of the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of, and summary of the basis for, the amount established as just compensation. Where appropriate the just compensation for real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property acquired through federal or federally assisted programs before the agreed purchase price is paid or there is deposited with a court having jurisdiction of condemnation of such property, in accordance with applicable law, for the benefit of the owner an amount not less than the lowest approved appraisal of the fair market value of such property or the amount of the award of compensation in the condemnation proceeding of such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move his business or farm operation without at least 90 days' written notice from the date by which such move is required.

- (6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.
- (7) In no event shall the time of condemnation be advanced, on negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.
- (8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.
- (9) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the entire property shall be made.

**57-12-14. Dispute resolution - Additional appraisal.**

- (1) If the agency and the private property owner or displaced person disagree on any issue arising out of this chapter, the private property owner may submit the dispute for mediation or arbitration according to the procedures and requirements of Section 63-34-13.
- (2) (a) The private property owner or displaced person may request that the mediator or arbitrator authorize an additional appraisal.
- (b) If the mediator or arbitrator determines that an additional appraisal is reasonably necessary to reach a resolution of the case, the mediator or arbitrator may:
  - (i) have an additional appraisal of the property prepared by an independent appraiser; and
  - (ii) require the agency to pay the costs of the first additional appraisal.